IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3091 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEHSANA ZILLA KARID VECHAN SANGH LTD

Versus

PATEL RAMESHBHAI VITHALDAS

Appearance:

1. Special Civil Application No. 3091 of 1996

MR GM JOSHI for Petitioner No. 1

MR PK JANI for Respondent No. 1

NOTICE SERVED for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/12/2004

ORAL JUDGEMENT

1. The petitioner Society has preferred this petition in order to quash and set aside the order dated 12/03/1996, at Annexure-F to the petition, passed by the Gujarat State Co-operative Tribunal, Ahmedabad, in Appeal No.11 of 1995, whereby the order dated 28/12/1994, at Annexure-E to the petition, passed by the Board of Nominee, Mehsana, in Restoration Application No.17 of 1994 was confirmed.

2. The petitioner is a Society registered under the provisions of the Gujarat Co-operative Societies Act, 1961, (for short, "the said Act"). As respondent no.1 herein was involved in mis-appropriation of the funds of the petitioner Society, a suit being Lavad Suit No.1629 of 1990 was filed against respondent no.1 before the Board of Nominee for the recovery of the amount. The Board of Nominee vide its judgment and order dated 09/05/1994 allowed the said application. Respondent no.1 preferred an application for restoration being Restoration Application No.17 of 1994 before the Board of Nominee. The Board of Nominee by order dated 28/12/1994, at Annexure-E to the petition, allowed the Restoration Application preferred by respondent no.1 herein.

3. Feeling aggrieved by the said order passed in the aforesaid Restoration Application, the petitioner Society preferred appeal being Appeal No.11 of 1995 before the Gujarat State Co-operative Tribunal. The Tribunal vide order dated 12/03/1996, at Annexure-F to the petition, rejected the appeal preferred by the petitioner Society. Hence, this petition.

4. Mr.G M Joshi for the petitioner Society has submitted that neither any sufficient reasons were shown by respondent no.1 for not remaining present in the proceedings before the Board of Nominee nor any affidavit to that effect was filed on behalf of the Advocate for respondent no.1. He has contended that as respondent no.1 wanted to delay the proceedings, he had preferred an application on the ground that his Lawyer had not informed him about the adjournment / adjudication of the matter.

5. Mr.Joshi has further contended that the application preferred by respondent no.1 for restoration was not maintainable as the provisions of Order 9 Rule 13 of the Civil Procedure Code, 1908, were not applicable to the case on hand. He has, therefore, contended that the said application ought to have been dismissed by the authority.

6. The matter had come up before this Court on several occasions and it was adjourned from time to time in order to give opportunities to the parties to settle their dispute amicably. Even an opportunity was given to respondent no.1 to show his bonafide by depositing some amount, out of the total amount alleged to have been misappropriated by him. Mr.P K Jani for respondent no.1 has submitted that respondent no.1 is not in a position to deposit any amount out of the amount alleged to have been misappropriated by him. Hence, the matter was taken up for final disposal today.

7. I have heard learned counsel for the parties and perused the relevant documents on record. The Board of Nominee while deciding the application of respondent no.1 has erred in allowing the said application, inasmuch as the date on which the matter was fixed before it respondent no.1 had attended the Court, as is clear from the application preferred by respondent no.1 himself at page 30 of the petition, where he has stated that he had remained present in the Court on 12/11/1993. The Board of Nominee had failed to appreciate the fact that the provisions of Order 9 Rule 13 of the Civil Procedure Code, 1908, would not apply to the case on hand, and consequently, the application for restoration was not maintainable. Moreover, even, no affidavit was filed on behalf of respondent no.1 before any of the authorities.

8. The Tribunal has materially erred in ignoring the aspect of delay which is an error of jurisdiction and which goes to the root of the matter. Hence, the order of the Board of Nominee as well as of the Tribunal deserves to be quashed and set aside.

9. For the foregoing reasons, this petition is allowed. The order dated 28/12/1994, at Annexure-E to the petition, passed by the Board of Nominee, Mehsana, in Restoration Application No.17 of 1994 and the order dated 12/03/1996, at Annexure-F to the petition, passed by the Gujarat State Co-operative Tribunal, Ahmedabad, in Appeal No.11 of 1995 are quashed and set aside. The order dated 09/05/1994 passed by the Board of Nominee, Mehsana, in Lavad (Arbitration) Suit No.1629 of 1990 is restored to file. Rule is made absolute accordingly.

(K. S. Jhaveri, J.)
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